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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/635,871

08/05/2003

Dan Pharo

9752

7590

11/19/2004

Robert J. Schaap
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21241 Ventura Blvd.
Woodland Hills, CA 91364

EXAMINER

COURSON, TANIA C

ART UNIT

PAPER NUMBER

2859

DATE MAILED: 11/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/635,871

Applicant(s)

PHARO ET AL.

Examiner

Tania C. Courson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28JUN04 & 20AUG04.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 20-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 20-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 August 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. The examiner acknowledges the supplemental declaration in which priority is not claimed. The examiner notes that the applicant's chart includes the erroneous understanding that the abandonment date is associated with the date of mailing the abandonment notification, instead the date of abandonment date should be associated with the mailing date of the last office action.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the following must be shown or the feature(s) canceled from the claim(s):

- a) claim 1, section e "a plurality of movement indicator elements on said pathway between spaced apart pathway boundaries";
- b) claim 13, section d "a plurality of movement indicator elements on said ground cover substrate between spaced apart pathway boundaries";
- c) claim 27, lines 2-3, "movement indicator elements are footprints";
- d) claim 28, lines 2-3, "wherein said footprints are oriented to show a walking movement";
- e) claim 29, section e "movement indicator elements on the pathways between spaced apart pathway boundaries".

No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claim 1 is objected to because of the following informalities: in line 1, section a, “a at least” should read “at least”. Appropriate correction is required.
4. Claims 1, 6, 13-14, 23-24, 26, 29, 31 and 34 are objected to because of the following informalities:
 - a) Claim 1 is confusing because the claim language, in lines 9-12 of subparagraph (b) of the claim states that intended use of the guidance and location control system includes “so that the individuals may proceed to a destination in advance of the front end of the line”. Similarly, lines 10-14 of subparagraph (d) involves a similar phrasing. However, this phrasing appears contradictory to the Examiner since it appears that the destination would be the end of the line or pathway, or that it would be past the end of the line and not in advance thereof

Claim 1 also mentions the phrases “end of a line of the group”, “the front end of the line”, etc. Is the “end of the line” referring to the end of the substrate? Are all these “end of lines” referring to the same element? Appropriate correction is required.

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Claims 6, 13-14, 23-24, 26, 29, 31 and 34 make reference to phrases considered confusing for the reasons stated above. Clarifications to this matter is required in every instance.

Abstract

5. The Amendment dated June 28, 2004, states on page 2 that a revised abstract has been provided on a separate sheet, it appears this sheet is missing, thus the objection to the abstract is restated.

Applicant is reminded again of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 6-8,10, 12 and 24-26 are rejected under 35 U.S.C. 102 (b) as being anticipated by Castle et al.

Castle et al. teaches a flooring system including the following:

- a) a ground cover substrate 20 having a transparent cover 18 thereon to define a pocket 24. Within the pocket 24 is an advertising substrate 34, which is considered to be the claimed "plurality of path forming elements" associated with said ground cover substrate which represent a physical standing position and being located in an orientation generally perpendicular to a direction of movement". The advertising substrate 34 includes a first advertising informational message that is interchangeable with other informational messages. The message is raised presented at an upper relatively flat surface of the substrate 20, since it is positioned thereon. Also, the informational message may be applied to the substrate to create a 3-dimensional effect. Positioned below the substrate 34 is a sheet 32 formed of an open cell rubber sponge material. This sheet provides cushioning and prevents slippage. The substrate 34 and pocket 24 is mounted within a recess in the substrate 20. The

newly added claim language “or an end of line position” simply provides an option and doesn’t further limit what the “element” represents.

With respect to the preamble of the claim 6: the preamble of the claim has not been given any patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self – contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

Applicant should note that the claims include replete functional language not sufficient to patentably distinguish the claimed invention from the prior art. Examples of such functional language is the phrase "which represents a physical standing or waiting position", “each of said informational messages having content which is related to the facility at which the pedestrian individuals are being serviced”, “representing a waiting location for the individual”, “to define a pedestrian pathway”, “said pathway is of sufficient width to receive a group of individuals and arranged to guide the group of individuals”, all of which are directed to the intended use of the “elements” rather than its structure”.

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 1-3, 5, 13, 14, 16-18, 20-23 and 27-34 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Hensler et al. in view of Chien, Gehweiler et al. and Sanders.

Hensler et al. teach a floor mat (at least one ground cover substrate) with borders for indicating a path between the borders and the pathway sufficiently wide and less than the width of an automobile. The borders are arranged to be visible in low and high light conditions.

Hensler et al. do not teach an elongated element/indicia associated with the substrate and the borders each being a pair of rows of small discrete path forming elements being sufficiently low to said ground surface and a plurality of movement indicator elements on a pathway between spaced apart pathway boundaries.

Chien, in figure 17, teaches that it is known to include elongated exit signs 59 on a ground surface. The sign 59 includes directional information in the form of an arrow, which can change.

Gehweiler et al. teach that it is known and desirable in the prior art to replace painted marking lines with rows of circular die cut indicating members (aisle markers). See col. 1, lines 24-37. The indicating members are secured by means of adhesive, which is temporarily covered by a removable liner. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hensler et al. by replacing the borders thereof with die cut members (either elongated or circular), since Gehweiler et al. teach that die cut members are an alternative means for designating a walkway, as compared to the means of Hensler et al. The choice of which means to use (ie. the means of Hensler et al. or Gehweiler et al.) would depend upon the desires of the user/manufacturer and the available resources.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hensler et al. by including one or more of the ground signs of Chien on the mat thereof, for the purpose of indicating the position of an exit relative to the mat. Such a modification would result in the borders extending from a location proximate the ends of the sign(s) from Chien. Also, the sign(s) of Chien would be raised above the mat of Hensler et al., since the sign(s) would be positioned thereon.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hensler et al. by including a plurality of movement indicator elements on a pathway between spaced apart pathway boundaries (Fig. 9, 113) of Sanders on the mat thereof, in order to lead the way to a destination by providing visible elements in high and low light conditions.

With respect to the preamble of the claims 1 and 13: the preamble of the claim has not been given any patentable weight because it has been held that a preamble is denied the effect of

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a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self – contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

Applicant should note that the claims include replete functional language not sufficient to patentably distinguish the claimed invention from the prior art. Examples of such functional language is the phrase "for defining an end of line of the group of pedestrian individuals", which is directed to the intended use of the "element" rather than its structure, "said pathway being of a width sufficient to receive a line of individuals", "said pathway being of a width sufficient to receive a line of individuals", "arranged in a desired orientation to conform to an existing environment", "representing a location for each successive pedestrian individual", "each of said informational messages having content which is related to the facility at which the pedestrian individual are being serviced", "do not constitute barriers to individuals", to conform to an existing environment", "represent an end of line position" all of which are directed to the intended use of the "elements" rather than its structure" and recently added "to suggest that the individuals in the line walk in the pedestrian pathway", "to depict the direction of movement", "to present a desired pathway", "causing movement of a group of individual which would otherwise congregate", "causing the group of individuals to walk in the defined pathway", "allowing each of the individual who reach the front end of the line to wait their turn" and "so that a substrate does not constitute a barrier".

Regarding claim 22: It has been held that the recitation that an element is “capable of” performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Therefore, one skilled in the art would use an alternate type of ground cover substrates in order to suit the needs of the user of the device.

10. Claim 4 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Hensler et al. in view of Chien, Gehweiler et al and Sanders. as applied to claims 1-3, 5, 13, 14, 16-18, 20-23 and 27-34 above, and further in view of Phillips.

Hensler et al., Chien, Gehweiler et al. and Sanders together teach all that is claimed, as discussed in the above rejection of claims 1-3,5,13,14, 16-18, 20-23 and 27-34, except for the elongate element and discrete elements being fastened to the mat by downwardly projecting threaded members.

Phillips teaches tactile members attached to a ground surface by screws. It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify Hensler et al., Chien, Gehweiler et al. and Sanders by utilizing screws to secure the die cut members to the mat, since Phillips teaches that screws are a known means for securing indicators to a supporting surface, such as wood or linoleum.

11. Claims 1-3,5,13-16, 18 and 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hensler et al. in view of Castle et al., Gehweiler et al and Sanders.

Hensler et al. teach a floor mat (at least one ground cover substrate) with borders for indicating a path between the borders and the pathway sufficiently wide and less than the width of an automobile. The borders are arranged to be visible in low and high light conditions. The borders are considered to be small discrete elements associated with the substrate.

Hensler et al. do not teach an elongated element /indicia associated with the substrate and the borders each being a pair of rows of small discrete path forming elements.

Castle et al. teach that it is known to include elongated signs/indicia on a ground surface. The sign includes a pocket within which is positioned a member having indicia thereon. Gehweiler et al. teach that it is known and desirable in the prior art to replace painted marking lines with rows of circular die cut indicating members (aisle markers). See col. 1, lines 24-37. The indicating members are secured by means of adhesive, which is temporarily covered by a removable liner.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hensler et al. by replacing the borders thereof with die cut members (either elongated or circular), since Gehweiler et al. teach that die cut members are an alternative means for designating a walkway, as compared to the means of Hensler et al. The choice of which means to use (i.e. the means of Hensler et al. or Gehweiler et al.) would depend upon the desires of the user/manufacturer and the available resources.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hensler et al. by including one or more ground signs as taught by Castle et al. on the mat thereof, for the purpose of conveying additional information to a person walking on the mat. Such a modification would result in the borders extending from a location

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proximate the ends of the sign(s) from Castle et al. Also, the sign(s) of Castle et al. would be raised above the mat of Hensler et al., since the sign(s) would be positioned thereon.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hensler et al. by including a plurality of movement indicator elements on a pathway between spaced apart pathway boundaries (Fig. 9, 113) of Sanders on the mat thereof, in order to lead the way to a destination by providing visible elements in high and low light conditions.

With respect to the preamble of the claims 1 and 13: the preamble of the claim has not been given any patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self – contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

Applicant should note that the claims include replete functional language not sufficient to patentably distinguish the claimed invention from the prior art. Examples of such functional language is the phrase "for defining an end of line of the group of pedestrian individuals", which is directed to the intended use of the "element" rather than its structure, "said pathway being of a width sufficient to receive a line of individuals", "said pathway being of a width sufficient to receive a line of individuals", "arranged in a desired orientation to conform to an existing environment", "representing a location for each successive pedestrian individual", "each of said informational messages having content which is related to the facility at which the pedestrian

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individual are being serviced”, “do not constitute barriers to individuals”, to conform to an existing environment”, “represent an end of line position” all of which are directed to the intended use of the “elements” rather than its structure” and recently added “to suggest that the individuals in the line walk in the pedestrian pathway”, “to depict the direction of movement”, “to present a desired pathway”, “causing movement of a group of individual which would otherwise congregate”, “causing the group of individuals to walk in the defined pathway”, “allowing each of the individual who reach the front end of the line to wait their turn” and “so that a substrate does not constitute a barrier”.

12. Claim 9 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Castle et al. in view of Chien.

Castle et al. teach all that is claimed, as discussed in the above rejection of claims 6-8,10, 12 and 24-26, except for the informational message showing direction of movement and cooperates with path forming elements.

Chien teaches that it is known for floor signs to provide directional indicia which cooperates with path forming elements. See figure 17.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Castle et al. by providing the message thereof with directional indicia, since Chien teaches that such is desirable information to convey to individuals.

13. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Castle et al.

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Castle et al. teaches all that is claimed, as discussed in the above rejection of claims 6-8,10, 12 and 24-26, except for the claimed foam material.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Castle et al. by making the material 32 from foam, since one having ordinary, skill in the art would recognize that foam is well suited for the stated purposes of the material 32 of Castle et al.

Double Patenting

14. Claims 1 - 34 of this application conflict with claims 1 - 32 of Application No. 10/633,480 and with claims 1 - 36 of Application No. 09/758,934. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP§ 822.

Please note that the latest amendments made to the present application and to copending applications 10/633,480 and 09/758,934 appears to eliminate subject matter that differentiated the claimed subject matter in applications, resulting in conflicting claims and raising the possibility of an obviousness type Double Patenting in the future.

Response to Arguments

15. Applicant's arguments filed on June 28, 2004 and August 20, 2004 have been considered but are moot in view of the new ground(s) of rejection.

16. Applicant remarks regarding the Personal Interview conducted on February 19, 2004 are not persuasive and inaccurate. Applicant states that the interview was conducted with the Examiner and Supervisory Examiner Diego F.F. Gutierrez, and further adds that the amendment to claim 1 including the addition of a plurality of movements indicator elements on the pathway, i.e., footprints, was believed by both Examiners to potentially place the claims in condition for allowance. These assertions by the Applicant are inaccurate.

The aforesaid interview was conducted by the Examiner of record Tania Courson, and Examiner R. Alexander Smith, was invited to be present since he is involved in the examination of the copending application 10/633,480, which involves a similar subject matter. Supervisory Examiner Diego F.F. Gutierrez was not present during the interview. In addition, the proposal of a claim amendment to include footprints was not discussed nor indicated as a potential allowable subject matter. Please note that the Interview Summary on record does not make any mention of any this matter. During the course of the interview Applicant were notified that the claims recite merely intended and functional language and that the structural features are not considered to carry any patentable weight since the prior art of record clearly anticipates the structure as claimed. Applicant have not been informed, either in the previous Office Actions or the Interview Summary of any potential allowable subject matter.

Conclusion

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The prior art cited on PTO-892 and not mentioned above disclose a movement system:

Stoner et al. (US D197,325)

Arena (US 6,783,829 B2)

Donnellan (US 2,995,849)

Mitchell (US 2,984,923)

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tania C. Courson whose telephone number is (571) 272-2239.

The examiner can normally be reached on Monday-Friday from 8:00AM to 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez, can be reached on (571) 272-2245.

The fax number for this Organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DIEGO F.F. GUTIERREZ
SUPERVISORY PATENT EXAMINER
GROUP ART UNIT 2859

TCC
November 15, 2004